



Board Summary Memo

To: Board of Directors
From: Lanae Raymond, Director, Environmental Resources Division (ERD)
Date: June 14, 2019
Re: MS4 Permit items for Board Action
Board Meeting Date: June 26, 2019

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Purpose

This Summary Memo will provide the Board with background information about three Municipal Separate Storm Sewer System (MS4) Permit items for which ERD will formally request Board action at the June Board Meeting. SEMSWA staff have prepared these items in order to meet the July 1, 2019 compliance schedule for the 1) Post-Construction Stormwater Management in New Development and Redevelopment, and the 2) Construction Sites programs in the MS4 Permit. These items include:

1. A Resolution to authorize and adopt a new *Post-Construction Stormwater Management in New Development and Redevelopment Implementation Document*, including revisions to Stormwater Management Manual (SMM) Chapter 14 – Stormwater Quality, to address the design, installation, and long-term maintenance of permanent water quality Control Measure facilities; and
2. A Resolution to authorize and adopt an amended Standard Maintenance Agreement for permanent water quality facilities, now titled a *Water Quality Facility Maintenance Agreement*; and
3. A Resolution to authorize and adopt a revised Grading, Erosion and Sediment Control (GESC) Manual, dated May 2019, to reflect a joint manual with Arapahoe County (County).

Discussion

(1) Post-Construction Implementation Document

The MS4 Permit has a Post-Construction Stormwater Management for New Development and Redevelopment program that requires the design and installation of permanent water quality Control Measure facilities that treat stormwater from a site *after* construction is complete. At this point in a development, the stormwater runoff quality is affected by urban pollutant influences (parking lot hydrocarbons and landscaping chemicals, for example) and not a result of construction pollutants (sediment, for example), which the GESC program manages.

The SEMSWA Stormwater Management Manual (SMM), specifically Chapter 14, contains the requirements on the developer team for the design, installation, and long-term maintenance for these facilities. Additional SMM chapters address the process for review and approval of these facilities, the variance request process to deviate from the requirements, and other procedures (hereafter referred to as “administrative requirements”) to ensure that the permanent water quality Control Measures are installed per the design and capable of long-term functionality. SEMSWA updated Chapter 14 in 2012 to meet MS4 Permit legal mechanism requirements. The current Permit requires an update of SEMSWA and County respective SMMs, specifically Chapter 14, by July 1st.

SEMSWA and the County took advantage of the timing of the MS4 Permit compliance schedule and explored the idea of a SMM that could be utilized by both SEMSWA and the County to meet MS4 Permit requirements. In order to be more efficient in the design of these permanent water quality Control Measure facilities as well as the review/comment, permitting, inspection, enforcement, and facility final acceptance, it was determined that having a joint, or at a minimum, a very similar manual with the County would be the best option. The efficiencies for SEMSWA staff managing the Post-Construction Program the same in the City and County, and the benefit to the

development community and to contractors to have the same requirements, were the overarching goals of the SMM revision. However, completing all 14 chapters by July 1st was not an option, so it was decided that revising the singularly important water quality Chapter 14 would be the priority, with the other chapters completed by the end of the year. This timetable required us to document the “administrative requirements” contained in other chapters preemptively, and couple it with Chapter 14 to be a stand-alone Implementation Document.

In summary, the eventual 2019 SMM will reflect many months of collaboration to achieve a manual that works effectively for both MS4s and the regulated community. In the meantime, Chapter 14 has been updated to reflect the MS4 permit regulations that are required to be met in the County and City, and together with the “administrative requirements”, completes the documentation to meet the July 1st permit compliance schedule.

(2) Post-Construction Control Measure Maintenance Agreement

A critical component of the Post-Construction Stormwater Management for Development and Redevelopment Program of the MS4 Permit is ensuring the long-term maintenance of these permanent water quality Control Measure facilities so that they function as designed to treat urban pollutants. The legal mechanism to ensure the long-term functionality of the facility is the Maintenance Agreement (MA) executed with the Owner for each site with a water quality facility. The SEMSWA Board approved Resolution No. 32, Series of 2007 “Approval of Standard Stormwater Maintenance Agreement and Authorization of the Executive Director to Execute the Standard Stormwater Agreement Maintenance Agreement”, to meet this critical element of the Post-Construction program requirements. This Standard MA required the owner to self-inspect and report the results of the inspection to SEMSWA annually.

The current MS4 Permit provides additional clarification for long-term operations and maintenance requirements for permanent water quality Control Measures, requiring the MA to be amended to meet the permit requirements. The revised MA will continue to require the owner and all subsequent owners to maintain the functional elements of the permanent water quality Control Measure facility in perpetuity such that the facility functions in accordance with the approved design. However, staff is taking this opportunity to remove the requirement for owner/operator self-inspections and reporting to SEMSWA annually, as this program has had varying degrees of success such that having it included as an auditable procedure is not advisable. Instead, inspecting the Control Measure to ensure the functionality of the facility will be a SEMSWA responsibility, with an inspection performed once a permit term, at a minimum, to meet MS4 permit requirements. The Colorado Springs – EPA lawsuit judgement provided clear direction regarding the responsibility of the permit holder to ensure functionality through inspections and maintenance, and although we will still require the owner to maintain the facility (with the MA providing compliance assurance for the maintenance), SEMSWA needs to be more directly involved in the inspection process.

Additionally, with the adoption of the SEMSWA Enforcement Response Plan (Resolution 18-16), specific compliance enforcement procedures that were previously contained in the MA will be instead referred to the Enforcement Response Plan. Also, the facility legal access conditions of the MA have been clarified to make sure SEMSWA can effectively inspect to ensure its proper working condition, as well as giving SEMSWA legal means of access for the purposes of inspecting, operating, installing, constructing, reconstructing, maintaining, and repairing or replacing the Control Measure facility to the extent that the owner fails to do so, at the owner’s expense.

In summary, the revised MA will provide SEMSWA a means to implement an effective Post-Construction Stormwater Management in New Development and Redevelopment Program that ensures the long-term operations and maintenance of a permanent water quality Control Measure facility such that it functions in accordance with the approved design.

(3) GESC Manual

The Grading, Erosion and Sediment Control Manual (GESC Manual) describes the permitting program adopted by SEMSWA to promote environmentally sound construction practices in the Service Area through implementation of a GESC Permitting Program. The SEMSWA GESC Manual, adopted by the Board in May 2018, simply and concisely states the GESC requirements with no ambiguous ‘guidelines’ that could be confusing during an audit; documents several streamlined and more cost-effective permitting approaches for minor land disturbance sites; adds new requirements for trash, waste, and pollutant control at sites as mandated by the current MS4 Permit; and allows a Contractor to choose alternate preferred Control Measures and try out new technologies.

The County has not completed a GESC Manual update since 2012, and with SEMSWA operating the GESC Permit Program on behalf of the County in the SEMSWA Service Area, it was not a priority. With the July 1st compliance schedule requiring each MS4 to have all legal mechanisms and implementable programs in place to meet the MS4 Permit requirements, it became a priority to update the County GESC Manual. SEMSWA and the County took advantage of the timing and explored the idea of a GESC Manual that be utilized by both SEMSWA and the County. In order to be more efficient with GESC site plan preparation and review, permitting, inspection, enforcement, and close-out, it was determined that having a joint manual with the County would be the best option. The efficiencies for SEMSWA staff managing the GESC Permit Program the same in the City and County, and the benefit to the development community and to contractors to have the same requirements, were the overarching goals of this revision process.

In summary, the revised 2019 GESC Manual reflects many months of collaboration to achieve a manual that works effectively for both MS4s and the regulated community, and provides a Construction Sites program that mitigates pollutants from land disturbing activities.

Summary

SEMSWA staff are submitting three (3) Resolutions for the Board to consider that either develop, revise or strengthen the implementation of our MS4 Programs, including:

Program Area	Resolution	Intent
Post-Construction Stormwater Management for Development and Redevelopment	#1: Authorize and Adopt Post-Construction Stormwater Management Implementation Document	An interim document to meet a July 1 st MS4 Permit compliance schedule that updates Chapter 14, Stormwater Quality, prior to the revision of the entire Stormwater Management Manual and incorporates necessary corresponding administrative procedural requirements.
Post-Construction Stormwater Management for Development and Redevelopment	#2: Authorization to Amend the Standard Water Quality Facility Maintenance Agreement	The revised Maintenance Agreement will provide SEMSWA a legal means to access, inspect and ensure the long-term operations and maintenance of a permanent water quality Control Measure facility so that it functions in accordance with the approved design.
Construction Sites	#3: Authorize and Adopt Revised GESC Manual	In order to be more efficient with GESC site plan preparation and review, permitting, inspection, enforcement, and close-out, it was determined that having a joint manual with the County replacing the May 2018 GESC Manual would be the best option.

